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ABSTRACT

This handbook interprets New York's education laws that require each public school district to provide permanent and requested noninstructional services for resident nonpublic school pupils. Each chapter describing a service includes a question and answer section; the document's final pages list legal citations and education department contacts. Chapter 1, "Health Services," describes Education Law 912, which directs that districts make equivalent health and welfare services available to all students. Questions cover implementation and requirements. "Textbook Loan Program," chapter 2, discusses district purchase and loan of textbooks. Questions concern types of textbooks, administrative obligations, and equitable treatment. Districts' purchase and loan of computer software programs is analyzed in chapter 3, "Computer Software Loan Program," where questions of implementation, exclusions, and obligations are discussed. Chapter 4, "School Library Materials Loan Program," explains district loan of learning aids to nonpublic schools. The program is administered in the same manner as the computer program. The law requires noncity districts to provide transportation for pupils, and this provision is described in chapter 5, "Transportation Services." Questions address methods, handicapped pupils, and dual enrollment. "Dual Enrollment Programs," chapter 6, analyzes enrollment of nonpublic school pupils in three categories of public school programs: occupational, handicapped, and gifted education. (CJH)

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HANDBOOK ON SERVICES TO PUPILS ATTENDING NONPUBLIC SCHOOLS

The University of the State of New York
The State Education Department
Office of Nonpublic School Services
1986

EA 019 043

EA

Handbook on Services to Pupils Attending Nonpublic Schools

Revised 1986

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Introduction

The University of the State of New York embraces a host of educational and cultural institutions. The cornerstone in the foundation of this complex educational system consists of the elementary and secondary schools which provide an instructional program to all school-age children. The quality of education offered by our schools is renowned throughout the nation.

Historically, educational institutions in the State have included both public and nonpublic schools. Parents have had the choice of sending their children to the public school of the district in which they reside or to a nonpublic school whose educational philosophy and religious affiliation reflect those of the family. Such options have been available to parents since the inception of the school system.

Along with the opportunities for education, all pupils in the State have a right to receive certain services. New York State law directs each public school district to provide certain services to all pupils who live within the district, to those who are enrolled both in nonpublic and public schools, but it prohibits public support for instructional services in nonpublic schools. Services are automatically provided to pupils in public schools, as public school officials are acquainted with the number and needs of those pupils. For nonpublic school pupils, however, it is necessary for either the parent or the nonpublic school administrator to request certain services from the public school district. The major purpose of this Handbook is to describe these services, how to arrange for them, and how to resolve the details of their operation.

Requests for and provision of services to nonpublic school pupils can be most effective when a spirit of cooperation prevails. Nonpublic school parents and administrators and public school officials are urged to be sensitive to the needs and constraints of both sectors. A cooperative effort to find the best and most economical ways to resolve differences will often include some adaptation and flexibility on the part of nonpublic and public school people. We encourage such efforts, as open discussion and cooperation have in the past proved beneficial to all.

The six major areas covered in this Handbook deal with health services; textbook, computer software and library materials loans; dual enrollment; and transportation. A narrative description of each one is followed by a question-and-answer section. The Handbook addresses both general and specific questions, but individual circumstances may need a finer interpretation. The final pages of the Handbook list legal citations for each area and also the names and phone numbers of units in the Education Department to which more detailed questions may be addressed.

Staff members responsible for this publication are: Doris Belton, George Davis, Charles Drago, Lawrence Gloeckler, Richard Hehir, Arlene Sheffield, Rachel Smith, and Brian Walsh.

I. Health Services

Education Law 912 requires each of the school districts in New York State, except New York, Buffalo, and Rochester, to provide resident pupils who attend nonpublic schools with all of the same health and welfare services as are made available to pupils who attend the public schools of the district. The authorities of the nonpublic school must request these services which include, but are not limited to, all of the services performed by a physician, dentist, dental hygienist, nurse, school psychologist, school social worker and speech correctionist. The services also may include providing dental prophylaxis; vision, hearing and scoliosis screening tests; taking health histories; physical examinations and in-school immunization; maintaining cumulative health records; and administering emergency care programs for ill or injured pupils.

Except in the cities of New York, Buffalo and Rochester, these services must be provided by the school district in which the nonpublic school is located. In these three cities, such services must be provided by the agency that provides school health services to the public school district.

Where pupils attending a nonpublic school actually live in another public school district, the two public school districts must enter into a written contract governing the services to be provided and the reimbursement for such services.

Sections 901–914 of Education Law and Commissioner's Regulation 136.2(d)(2) specify the minimal school health services which a board of education must provide for its pupils. (New York City, Buffalo and Rochester are excepted from these requirements.) These include: (1) physical examinations upon entrance to school, upon entrance to grades 1, 3, 7 and 10 and at any other time deemed necessary by school authorities in the educational interests of the pupil; (2) an annual vision screening test for all pupils in grades K–12; (3) an annual hearing test for all pupils in grades K–7, at grade 10 and at any other time deemed necessary by school authorities in the educational interests of the pupil; (4) an annual scoliosis (spinal) screening test for all pupils 8–16 years of age; (5) the maintenance of cumulative health records; (6) written notification to parents of any health problems found; (7) emergency care of ill or injured pupils; and (8) compliance with and enforcement of mandatory immunization requirements.

When health and welfare services are requested by a nonpublic school, the obligation of the board of education is to provide services equivalent to those provided to public school pupils in the district in which the nonpublic school is located.

Questions and Answers

1. Who is required to provide these health and welfare services?

   The school district within whose geographic boundaries the nonpublic school is located must provide such services. In the cities of New York, Buffalo, and Rochester, the agency serving the public schools must provide these services.

2. Is the provision of such services a matter of course?

   No. The principal, owner, teacher or other person in charge of the nonpublic school must request these services.

3. Is there a particular form, manner or time for requesting such services?

   The law is silent on this point. However, school districts usually plan budgets and staff assignments in the spring for the following school year. Therefore, it is strongly recommended that the nonpublic school principal send a written letter of request to the public school superintendent in sufficient time to permit inclusion of such services in the budgetary and work plans. The nonpublic school administrator should confer with the superintendent of the public school to determine the best time for such requests.

4. How often must the nonpublic school request such services?

   The law does not specify any frequency. However, in general practice the request for such services is a one-time occurrence. It is recommended that such requests be reviewed annually. In so doing, all parties will have an opportunity to discuss the services provided; revise the requests, budgets, and work plans; and renegotiate contracts, if necessary.

5. What health and welfare services must be provided?

   All health and welfare services which are provided to pupils in the public schools must be available to pupils in the nonpublic schools, i.e., vision, hearing, scoliosis screening tests, physical examinations, dental screening, in-school immunization, and emergency care for ill or injured pupils.

6. Are there any limitations on the number or kind of services provided and the location at which they may be given?

   Yes. In sectarian nonpublic schools:

   a. The following services may properly be rendered by school districts to students attending nonpublic schools *on nonpublic school premises:* the services of a physician, dentist, dental hygienist or nurse; dental prophylaxis; vision and hearing tests; the taking of medical histories; the administration of health screening tests; the maintenance of cumulative health records and the administration of emergency care programs for ill or injured pupils.

   b. The services of a school psychologist and a school speech correctionist may be rendered on nonpublic school premises only to the extent that such services are diagnostic in nature. To the extent that the services of a school psychologist or school speech correctionist are therapeutic or remedial in nature, they may be rendered to a student attending a nonpublic school only if they are rendered on a religiously neutral site.

   c. The services of a teacher of the deaf may be rendered to nonpublic school pupils only on neutral premises.

   In summary, the school district may not provide direct instructional services to sectarian nonpublic schools, i.e., health teaching. Also, it may not provide any services not currently available to public school pupils.

7. What services are specifically identified as "therapeutic or remedial" in nature?

   Services of an instructional nature are considered "therapeutic or remedial;" services to assess or evaluate pupils are not considered therapeutic or remedial. Thus, a teacher of the speech and hearing handicapped may provide diagnostic or evaluative service as well as provide an instructional speech correction service. A teacher of the deaf provides instructional services only.

8. What is a "religiously neutral site"?

   Such a site may be, but is not limited to, a public school, a mobile unit, or some other public location.

9. Is the public school district responsible for providing transportation to a "religiously neutral site"?

   Such transportation must be provided if the distance to the site exceeds 1/4 mile.

10. Must a nonpublic school accept all of the health and welfare services provided to public school pupils?

    No. The nonpublic school may request only those services it needs or wants for its pupils.

11. Who pays for the services to nonresident pupils?

    Section 912 of the Education Law requires the school district in which the pupil resides to pay for health services provided to pupils residing in one district but attending a nonpublic school in another district.

12. How is this arranged?

    The school district in which the nonpublic school pupil lives and the school district providing the services enter into a written contract for an amount agreed upon by the two districts.

13. Are pupils enrolled in nonpublic schools who are not residents of New York State entitled to these services?

    No. No district is required to provide health and welfare services to pupils who are not residents of New York State.

14. If a nonpublic school has both day and boarding pupils, must the health and welfare services be provided to both groups?

    The school health services must be provided to both groups of pupils when the pupils are New York State residents. However, the school district is not required to provide 24-hour service to the boarding pupils. Again, no district is required to provide health and welfare services to pupils who are not residents of New York State.

15. If a nonpublic school does not request health services, must health services be provided?

    No.

16. When health services are requested must the school district also provide equipment and supplies?

    The law is silent on this point. In practice, the nonpublic school provides all of the permanent, nonconsumable facilities and equipment, e.g., room, furniture, files, scale, telephone and utilities; and the public school provides the consumable supplies,e.g., bandaids, tongue blades, thermometers, pupil health records and related forms. Equipment such as audiometers and mechanical vision testers are usually provided by the school district for the duration of the testing period.

17. Must the school district provide exactly the same kind of staff and hours of coverage to the nonpublic school pupils as are provided public school pupils?

No. The law specifies that the *services* performed and provided by the staff must be the same. The nature of staff coverage may vary and should be based on factors related to pupil need, pupil enrollment and time needed to provide the requested services.

18. How are equivalent health and welfare services determined?

    Equivalence of services is based upon the nature, scope and quality of the health and welfare services provided for the pupils in the school district in which the nonpublic school is located. The determination of equivalency of health and welfare services is made by the superintendent of the district which provides the services. Also, a school district may not provide any services not currently available to public school pupils.

19. Are the services of a speech correctionist and school psychologist considered to be within the classification of health and welfare services?

    Yes.

20. May all the health and welfare services be delivered in nonsectarian nonpublic schools?

    Yes.

21. May these services be delivered in sectarian (parochial) schools?

    That depends on the nature of the services requested. Diagnostic and evaluative services may be delivered in sectarian schools, but services which are "therapeutic or remedial" in nature may be rendered to pupils who attend sectarian nonpublic schools only if they are delivered at a "religiously neutral site."

22. If a public school district provides in-school immunization as a health service for public school pupils, must this service also be provided for nonpublic school pupils?

    Yes. If the nonpublic school requests this health service, in-school immunization must be provided.

23. Is the public or the nonpublic school responsible for maintenance, storage and disposition of the cumulative health records provided by the public school?

    Day-to-day maintenance of pupil health records is the responsibility of the health services staff provided by the school district. Storage and disposition of the records are the responsibility of the nonpublic school.

24. How long must a nonpublic school retain these records?

    While the law does not address this directly, nonpublic schools usually use the Records Retention and Disposition Schedule No. 1–S–1 which the public schools follow and which lists the different kinds of health (and other) records and their retention periods. It is available from State Archives, State Education Department, Cultural Education Center, Albany, New York 12230.

II. Textbook Loan Program

Section 701 of Education Law requires all school boards to purchase and to loan textbooks on an equitable basis to all pupils residing in the school district who are attending grades kindergarten through twelve in any public or nonpublic school. Each board of education is responsible for purchasing and loaning only textbooks that are nonsectarian.

The obligation of boards of education to provide textbooks for resident pupils is limited only by (a) existing stocks of textbooks available for use in public and nonpublic schools and (b) the total annual amount available for purchase of textbooks, which includes an apportionment from the State. Each school district receives funds from the State for the textbook loan program based on the number of pupils resident in the district. The current State apportionment is $25 times the number of resident pupils. This is the amount the district receives; it is not a formula for districts to use in providing textbooks. There is no limit on the amount a district may spend for a given pupil. No pupil may be denied textbooks for financial reasons if the district has not expended an amount equal to the State apportionment for textbooks.

Requests for the loan of textbooks to a nonpublic school pupil must be submitted in writing to the public school district in which the pupil resides. This can be done in a number of ways. Often nonpublic and public school officials agree on a format in which the nonpublic school submits requests collectively to the school district. In some cases, parents obtain textbook lists from the nonpublic school and submit them individually to the school district. Parents of pupils attending public schools in the district of residence are not required to submit such requests because school officials know what textbooks are to be used.

Chapter 635 of the Laws of 1984 amends the textbook loan program to allow a board of education to specify a date by which requests for textbooks must be received by the district. Notice of the date, which cannot be earlier than June 1 for requests for the following school year, must be given to all nonpublic schools. The law also provides that a parent or guardian of a pupil not attending a particular nonpublic school prior to June 1 may submit a written request for textbooks within thirty days after the pupil is enrolled in the nonpublic school. Also, a late request may not be denied where a reasonable explanation is given for the delay in making the request.

This permissive legislation does not require a district to establish a cut-off date for receipt of requests for textbook loans. It does specify that a district may not set a date before June 1 of the year prior to that for which textbooks are requested.

Through requests for the loan of textbooks, the school district ascertains needs in the various subjects of both public and nonpublic school pupils. The number of textbooks needed is then checked against existing book stocks to determine the number of textbooks that the district may be required to purchase. The total cost of the books being considered for purchase is then checked against the budgeted appropriation. If the total cost does not exceed the appropriation, purchase and distribution should proceed smoothly. If, on the other hand, the total cost exceeds the appropriation, the board will need to determine whether it wishes to exceed the appropriation. If so, it may increase the textbook appropriation or it may transfer money from other accounts into the textbook budget. If not, the board must determine the subject areas and grade levels for which it will not be able to provide textbooks.

If the board of education decides it should spend more than the appropriation, but not as much as is required to purchase all of the textbooks to meet the needs of all resident pupils attending public and nonpublic schools on an equitable basis, it must then determine in which subject areas or at which grade levels it will not be able to loan textbooks. As this decision will affect pupils in both public and nonpublic schools, the board is encouraged to discuss this matter with nonpublic school officials before making a decision about which textbooks will not be provided.

A school district may follow the usual procedure of purchasing textbooks directly from the vendor. If a school district wishes, it may contract with another school district or a Board of Cooperative Educational Services whereby that entity will purchase the textbooks and also may distribute them to the pupils. Under

this arrangement, the board of education of the district in which the pupils reside does not relieve itself of the responsibility for the approval and accountability for the textbooks as well as payment for them.

Textbook purchases for resident pupils of a school district enrolled in grades K–12 of public and nonpublic schools are ordinary contingent expenses. Thus, even in cases where budgets are defeated by the voters, the board has the duty to purchase and loan textbooks up to the mandated amount as well as the power to purchase and loan textbooks in excess of that amount.

In preparing its State aid forms a public school district may include the purchase price of the textbooks under textbook expenses. The cost of freight or postage for transporting such textbooks from the vendor to the district may be included in textbook expenses if the cost of the total amount of textbook expenses for all pupils in the district is *less* than the total State maximum aidable amount for the district. Otherwise, freight or postage should be included in operating expenses of the district. Orders for textbooks may *not* be limited by the district in order to reserve funds for the purchase of transporting such materials. The district may include in its regular operating expense other expenditures relating to the textbook loan program such as distribution, storage, administrative, but these expenditures may *not* be included for textbook aid purposes.

All textbooks remain the property of the school district and such ownership should be indicated in or on each book by labels or other appropriate methods of identification. The board of education may require that textbooks be returned to the district at the end of the school year. In cases where textbooks are used only for one semester, the board may require that they be returned at the end of the semester. The board of education may, if it wishes, enter into an agreement with a nonpublic school to store textbooks in the nonpublic school. In such cases, the district may not pay storage charges of any kind to the nonpublic school, nor may the nonpublic school charge the district for any administrative costs involved.

Since the law provides that textbooks be "loaned free" to pupils, no fees may be assessed in connection with the textbook loan program. The law authorizes school boards to make reasonable rules and regulations governing the loan of textbooks which may contain requirements for reimbursement by the pupil to the school district for damage, loss, or destruction of loaned books. Such rules and regulations must apply to both public and nonpublic school pupils and should be distributed to parents and pupils at the time books are loaned.

Questions and Answers

1. What is the definition of textbook?

   A textbook is any book or a book substitute, including hardcovered or paperback books, workbooks designed to be written in and used up, or manuals which a pupil is required to use as a text or a text-substitute in a particular class or program as a primary source of study material intended to implement a major part of a State or local curriculum.

2. What materials are excluded under the textbook loan law?

   Reference materials – encyclopedias, almanacs, atlases, and general and special dictionaries, except that dictionaries individually assigned to all pupils in a particular class or program as a textbook substitute are considered as textbooks.

   Supplementary materials – supplementary textbooks, novels, and other fiction, magazines, newspapers, and audiovisual materials normally housed in the school library or instructional materials center for short-term use by pupils.

   Other materials – texts and testing materials, teachers' editions of textbooks, review books, and materials in kit form.

3. May books be ordered which are authored by clergy or religious?

   Yes. Authorship by a member of the clergy alone does not exclude the book. The fact that the content is secular in nature is the determining factor. Textbooks containing an imprimatur may not be ordered.

4. Are all resident pupils in grades kindergarten through the 12th grade eligible for the loan of textbooks?

   Yes. All such pupils are eligible except pupils who reside or board at out-of-state schools.

5. Before it receives and reviews textbook requests from nonpublic schools, may a board of education decide which textbooks will *not* be purchased?

   No. Such a decision can only be made after *all* requests are received and the board has assessed all the needs and resources.

6. Once a textbook has been selected for a specific course, must it be retained for a specified period of time?

   The law specifies a five-year period for public schools but gives a school board the authority to override this requirement by a three-fourths vote. This provides flexibility when a new edition or change in instructional approach makes the former selection substantially inferior or ineffective.

The law does not specify a time period for textbooks used by pupils attending nonpublic schools. However, nonpublic schools are strongly urged to retain textbooks for a five-year period.

7. Must textbook requests be submitted to the board of education by a certain date?

   The law allows a board of education to set a date by which the district must receive requests for textbook loans, but this date cannot be earlier than June 1 of the year preceding that for which textbooks are requested. It is recommended that nonpublic and public school aministrators agree on a reasonable date and assemble textbook requests during the spring. This will ensure that textbooks are ordered in a timely fashion.

8. What is the obligation of the parents of pupils attending nonpublic schools?

   Parents of pupils attending nonpublic schools must submit to the board of education of their district of residence a written request for the textbooks needed by their children during the coming year. This request should include the information necessary to provide the books such as title, author, publisher, and copyright date. The request may be submitted through the nonpublic school.

9. What is the obligation of a nonpublic school administrator with regard to the loan of textbooks?

   A nonpublic school administrator must provide parents with the information necessary to request textbooks of their boards of education. Such information should include title, author, publisher, copyright date, and any other information necessary for processing the request.

10. Is the nonpublic school administrator required to submit collectively the parents' requests for textbooks?

    No. However, such an arrangement is allowed and can expedite the textbook loan process. Many school districts have made such arrangements with nonpublic school administrators and they have proven to be effective.

11. May a board of education appropriate an amount less than the State apportionment to the district for the purchase of textbooks?

    No. The law mandates that a board of education appropriate no less than its apportionment from the State. The current State apportionment is $25 times the number of resident pupils.

12. May a board appropriate more than the State apportionment for textbooks in the annual budget?

    Yes. There is no limit to the amount a board of education may budget for textbook purposes.

13. May a district limit the textbook requests from a nonpublic school to a specific amount based on the State apportionment?

    No. Textbooks must be loaned on the basis of individual pupil needs. The State formula for apportioning textbook funds *cannot* be applied to the distribution of textbooks within a district.

14. What must a board of education do if it does not have the resources needed to fulfill the textbook needs of all resident pupils?

    The board of education must decide how it will distribute equitably the books which it owns and the books which can be purchased from textbook funds. This will mean that some pupils may not receive all needed books. The board must decide which books it will not purchase. Any decision the board makes must apply equitably to pupils in both public and nonpublic schools and should involve nonpublic school officials in the decision-making. The board cannot require that only pupils attending nonpublic schools purchase textbooks.

15. Is it equitable treatment for all pupils to receive the same number of books?

    Probably not. Pupils' needs vary greatly depending upon grade level, school attended, or course of study. Books should be loaned on the basis of individual need.

16. Is it equitable treatment for all pupils to be allowed the same amount of money for textbooks?

    No. Equitable treatment is not related to equal dollars. Books are to be loaned on the basis of individual pupil need.

17. What is an example of equitable treatment when the board does not have the necessary resources to fulfill all requests?

    An example of equitable treatment is: a board might decide not to provide consumable workbooks in certain subject areas or to pupils in certain grade levels. For example, it might not provide reading workbooks to pupils enrolled in grades three and four in both public and nonpublic schools. Any such decision should be discussed with nonpublic school administrators, who are urged to be sensitive to the budgetary constraints in the school district.

18. Does the board of education have the responsibility for notifying parents of nonpublic school pupils that it is unable to provide all the textbooks requested?

    Yes. Nonpublic school parents and school administrators must know as early as possible which textbooks will and will not be available. It is unfair to pupils if notices are not received in a timely manner.

19. Is a board of education required to provide textbooks to pupils who become residents of the district after the school year has begun?

Yes. The board must provide textbooks to new residents if the books are available in the inventory or if there are sufficient funds in the textbook account. Boards are encouraged to make every effort to respond to the needs of such pupils in both public and nonpublic schools and are allowed to transfer money from other accounts into the textbook account.

20. In schools which use an individualized approach to learning, may texts on different levels be purchased for pupils in the same class?

Yes. The law does not require every pupil in the same class to use the same book.

21. Is a board of education required to purchase or loan textbooks for use at summer school?

No. There is no requirement that a board purchase textbooks specifically for use at summer schools. A board may, however, loan to summer school pupils the textbooks it already owns. These books must be loaned to both public and nonpublic school pupils on an equitable basis.

22. Does the law authorize the board of education to make reasonable rules covering the loan of textbooks?

Yes. Such rules apply equally to both public and nonpublic school pupils. It is good practice that such rules are shared with parents and pupils prior to the distribution of textbooks and periodically thereafter.

23. If books are picked up by the parent or nonpublic school officials at the public school district offices, may a district charge a parent or a nonpublic school for transportation, shipping, or administrative costs connected with textbook loans?

No. It is illegal for a district to make such charges.

24. May books be shipped directly to a nonpublic school?

Yes. Such an arrangement is permissible. However, if the nonpublic school requests this service, the nonpublic school may be required to pay the total shipping costs.

25. May a board of education charge parents for the damage, loss or destruction of the loaned textbook?

Yes. This charge would apply equally to parents of public and nonpublic school pupils.

26. Are the nonpublic schools responsible for storing books no longer in use?

No. The books belong to the school district and are its responsibility. However, a school district may enter into an agreement with the nonpublic school to store books in the nonpublic school. The nonpublic school may not charge the school district for any administrative costs involved.

27. What should a board of education do with textbooks that are obsolete or no longer used?

A board of education may dispose of outdated textbooks as it sees fit. It is advisable to keep a record of the disposition of any textbooks.

III. Computer Software Loan Program

Chapter 53 of the Laws of 1984 amends the Education Law by adding Sections 751 and 752 which provide for a computer software loan program. This legislation authorizes public school districts to purchase and loan computer software programs to both public and nonpublic school pupils. Currently each district receives a maximum apportionment from the State of $3.00 per child enrolled in grades K–12 in any public or nonpublic school located within the district. In addition, pupils residing in the district and attending BOCES and certain special programs for children with handicapping conditions may be claimed in the apportionment. The funds are to be used to purchase and/or loan computer software programs which nonpublic and public school pupils will use as learning aids.

Written requests for the loan of computer software programs to pupils enrolled in nonpublic schools must be presented to appropriate public school officials of the district in which the nonpublic school is located. Such requests are not required of public school pupils. While the written requests may be submitted by individual puils or groups of pupils to the district, it is recommended that pupils in nonpublic schools submit their requests through their nonpublic school administrators. The most efficient way to handle the requests is generally for the nonpublic school administrator to collect individual pupil requests and submit them with the enrollment figure directly to the districts.

It is the responsibility of the nonpublic school administrator to inform the district in which the school is located of the total number of pupils enrolled in the school as of the first school day of October of the base year; that is, the school year preceding the one for which the request is made. It is also the responsibility of the nonpublic school administrator to identify the computer software programs the pupils need and to convey this information to the district. All requests should be submitted to the district in a timely fashion and in accordance with the schedule set by the district after consultation with nonpublic school administrators. The request for new computer software programs should not exceed the sum of $3.00 times the number of pupils enrolled in the nonpublic school in the base year. The computer software programs requested for loan to nonpublic school pupils should be compatible with computers in the nonpublic school but there is no necessity for them to be compatible with computers in the public school.

Only those computer software programs that do not contain material of a religious nature may be purchased by a public school district. The computer software programs purchased under this legislation remain the property of the district and such ownership should be indicated on each item either by means of label or other method of identification. The district is not required to loan software programs purchased prior to this legislation or purchased with other funds.

All material acquired pursuant to this legislation is to be loaned free and on an equitable basis to pupils in both public and nonpublic schools. The district may not charge any transportation, shipping, handling or administrative costs to the funds appropriated under this legislation. Such costs must be counted by the district as ordinary contingent expenses. However, if the nonpublic school requests that computer software be shipped directly to the school, the nonpublic school may be required to pay shipping costs.

The district may, if it wishes, enter into an agreement with the nonpublic school to store the computer software programs in the nonpublic schools. In that case, the district may not pay storage charges of any kind to the nonpublic school.

The district may establish rules governing the loan of computer software programs which may require a pupil to reimburse the district for the damage or loss of loaned programs. Such rules must apply to both public and nonpublic school pupils.

For resident pupils in grades K–12 with handicapping conditions attending a BOCES full-time, the request for loan of computer software programs must be made to the district in which the pupil resides, not to the district in which the BOCES program is located.

Pupils with handicapping conditions attending private schools approved for the education of handicapped pupils and for which there is a State-approved tuition rate are not eligible to request the loan of software from public school districts under this program. The established tuition rate covers "the per pupil cost of all instructional services, supplies and equipment" and,

therefore, private schools known as 4401 schools, 4402 schools and Special Act School Districts and the Children's Unit for Treatment and Evaluation at SUNY Binghamton should acquire appropriate materials directly and such costs will be reimbursed through the tuition rate.

In summary, the nonpublic school administrator is to submit to the district the total number of pupils enrolled in grades K–12 of the nonpublic school and the list of computer software programs requested for their use. The district will purchase and loan these programs up to a maximum cost of $3.00 times the number of pupils enrolled in schools in the district. In turn, the district will receive an apportionment from the State not to exceed $3.00 per pupil. Public and nonpublic school administrators are encouraged to cooperate to the fullest extent to ensure the smooth and efficient administration of the program.

Questions and Answers

1. What is the definition of computer software?

   Computer software is defined as pre-prepared educational programs which are subject-oriented and which are prepared for use by pupils in conjunction with computers. These computer software programs must be required for use as learning aids in a particular class or program.

2. What materials are excluded under the computer software program?

   Computers, blank diskettes or cassettes or tapes, chips (except those which are part of a software package), computer correction devices, consoles, cords, blank disks, disk drives, and other similar items of hardware are excluded under this program. Any computer software programs which are sectarian in nature may not be purchased by a school district.

3. Are all pupils enrolled in grades kindergarten through twelve in schools within a district eligible to borrow computer software from the district?

   Yes. All pupils enrolled in schools within the district are eligible to participate in this program, with the exception of special schools, as noted, and of kindergarten pupils who are younger than the age of admission to the kindergarten of the public school district.

4. How much money does the district receive for this program?

   The district receives an amount equal to its current year's expenses for computer software programs not to exceed a maximum allocation of $3.00 times the number of enrolled pupils.

5. How is the amount of money a district receives determined?

   The maximum allocation from the State is based on the enrollment figures K–12 as of the first school day of October of the base year; that is, the school year preceding the current school year. This figure is multiplied by $3.00 per pupil. The district submits this information to the State on State Aid Form SA 102.

6. When should the nonpublic school notify the district of the enrollment?

   This figure should be available to the district at its request.

7. When should requests for the loan of computer software programs to nonpublic school pupils be submitted?

   The law does not specify a date. However, in order to have the computer software programs available for pupil use in a timely manner, each district should, after consultation with nonpublic school officials, establish a date for submission of requests.

8. Which computer software programs is the district obligated to loan?

   Computer software programs purchased with funds under this legislative authority are available for loan by the district to pupils attending nonpublic schools. The district should identify all computer software programs purchased with these funds and they must be available to all pupils on an equitable basis. Computer software programs purchased with other monies are not subject to the provisions of this program.

9. May a district limit computer software program purchases for use with specific computers?

   No. Any computer software program requested for loan by nonpublic school pupils should be compatible with the computers available for their use.

10. Must computer software programs loaned to nonpublic school pupils under this legislation be compatible with the computers in the public schools?

    Not necessarily. It is essential that the computer software programs ordered be compatible with the computers in the school the pupil attends.

11. May a nonpublic school order computer software programs directly and bill back the public school district?

    No. It is the responsibility of the district to purchase the computer software programs requested by nonpublic school pupils.

12. **May a district levy any charges to nonpublic schools, parents, or pupils for participation in this program?**

    No. These materials are to be loaned free to pupils and no fees may be assessed.

13. **What information should the nonpublic school administrator provide to the district?**

    The administrator should provide the total enrollment of the base year and a listing of all the computer software programs needed by the pupils. In listing the programs the administrator should include the titles of the programs, level, source and any other information necessary for processing the request.

14. **Does the law authorize the board of education to make reasonable rules covering the computer software program?**

    Yes. Such rules must apply equally to public and nonpublic school pupils.

15. **May a district charge pupils for the damage, loss or destruction of computer software programs?**

    Yes. This charge must apply equally to public and nonpublic school pupils.

16. **May boards of educational services (BOCES) provide the service needed to administer the computer software programs for local school districts?**

    Yes. If two or more districts request this service from BOCES and other BOCES guidelines are met, BOCES are required to provide this service.

17. **May a district lease computer software programs under this loan program?**

    Yes. Funds may be used to lease computer software programs. Funds must be expended on an annual basis; that is, a three-year lease arrangement cannot be paid in one lump sum but would have to be spread over three annual installments.

IV. School Library Materials Loan Program

Chapter 53 of the Laws of 1985 amends the Education Law by adding Sections 711 and 712 which provide for the establishment of a program in which public school districts purchase and loan school library materials required for use as a learning aid in a particular class or program. For the 1986–87 school year and thereafter, both printed materials and audiovisual materials may be loaned.

Under this program, each student in the State enrolled in grades K–12 may borrow library material in the amount of $2.00. The money for this program flows through the local school district. The total amount of this allocation to each district is based on the total school enrollment as of the first school day of October of the base year, that is, the school year preceding the one for which the request is made. All materials acquired under this legislation are loaned free and on an equitable basis to pupils in both public and nonpublic schools.

Since the school library materials loan program is administered in the same manner as the computer software loan program, information in the computer software question and answer section is applicable to the library materials loan program.

V. Transportation Services

The provisions of Section 3635 of the Education Law require all noncity districts to provide transportation for pupils enrolled in Grades K–8 who live more than two miles from their school of attendance and for pupils enrolled in Grades 9–12 who live more than three miles from their school of attendance up to a distance of fifteen miles. The distances in each case are measured by the nearest available route from home to school. The deadline for parents to submit requests for transportation to the district is April 1 or 30 days within moving into the district. In addition to providing transportation between home and school for pupils who meet the above distance requirements, a school district must designate one or more public schools as centralized pickup points and provide transportation between those points and nonpublic schools. In order for this arrangement to be made, the school district must currently be transporting pupils to that nonpublic school.

City school districts and the city portion of enlarged city school districts are not required to provide any transportation, except for suitable transportation for children with handicapping conditions. These districts may, however, by a majority vote of the board of education, elect to provide transportation. If transportation is provided, it must be provided equally to all pupils in like circumstances, those attending both public and nonpublic schools.

In enlarged city school districts, the board of education is required to provide transportation in accordance with the provisions of Section 3635 for those pupils residing within the enlarged portion of the city.

Section 3635, effective May 1, 1986, provides that New York City public school officials must by June 1 of each year notify administrators of nonpublic schools to which transportation has been requested of the public school calendar for the following year. Nonpublic school administrators may then request transportation on five days when the nonpublic schools are in session and the public schools are closed (excluding Saturdays, Sundays and legal holidays). The five days must be selected from: the Wednesday, Thursday and Friday following Labor Day, Rosh Hashannah, Yom Kippur and the week between Christmas Day and New Year's Day. In no case will transportation provided by New York City exceed 180 days.

The complexity of arranging routes and coordinating transportation for nonpublic school pupils from several districts attending a variety of nonpublic schools requires cooperative efforts in planning and communication. Public and nonpublic school officials are advised to discuss calendars, schedules and special pupil needs early in the planning stages. The efficient provision of transportation for all pupils can result from such discussions.

Questions about transportation are addressed in the following segments: (A) Conditions; (B) Requests for Transportation; (C) Late Bus Transportation; (D) Central Pickup Points; (E) Transportation for Handicapped Pupils; and (F) Transportation for Dual Enrollment.

Questions and Answers

A. *Conditions*

1. Are there any school districts which are not required to provide transportation to nonpublic school pupils?

   Yes. City school districts which do not provide transportation to public school pupils are not required to provide transportation to nonpublic school pupils. Also, school boards of enlarged city school districts are not required to provide transportation to public school pupils who reside in the city portion of the district. Consequently, none is required for nonpublic school pupils who reside in the city portion of the enlarged city district. However, transportation must be provided for public and nonpublic school pupils who reside in the enlarged portion of the city school district.

2. May public school officials require nonpublic school pupils who qualify for transportation to use public service transportation?

   Yes. The services must be reasonable and adequate, but they need not be exactly the same for public and nonpublic school pupils.

3. Is a city school district required to transport pupils to nonpublic schools located outside the city limits?

   No. A city school district is not required to provide such transportation. However, it may provide such transportation upon majority vote of the board of education.

4. Is the age of a pupil a factor in determining eligibility for transportation to a nonpublic school?

   Yes. Pupils attending nonpublic schools must meet the same age requirements that apply to public school pupils in a particular school district.

5. Are public school officials required to provide transportation to nonpublic school pupils during the summer?

   No. Such transportation is neither required nor authorized.

6. Are public school officials required to provide nonpublic school pupils with transportation which exceeds the legal transportation limits that apply to public school pupils?

   No. The exception to this is the central pickup point arrangement, which is addressed in segment D, page 15.

7. Are nonpublic school pupils entitled to be transported distances equal to those which are provided to public school pupils who are transported for the purpose of alleviating racial imbalance?

   No. Pupils transported to a public school for the purpose of alleviating racial imbalance are not in like circumstances to pupils attending a nonpublic school with respect to eligibility for transportation.

8. May transportation be denied to nonpublic pupils who live less than two miles from an elementary school (K–8) or less than three miles from a secondary school (9–12)?

   Yes. However, if a school district provides a transportation for public school pupils who live closer to their schools than these stated limits, it must provide transportation to nonpublic school pupils who are in the same circumstances.

9. With the exception of New York City, are school districts required to provide transportation to nonpublic schools on days when public schools are scheduled to be closed?

   No.

10. Is the school district of New York City required to provide transportation to nonpublic schools on any days when the public schools are scheduled to be closed?

    Yes. These days are limited to the Wednesday, Thursday and Friday after Labor Day. Rosh Hashannah, Yom Kuppur and the week between Christmas Day and New Year's Day.

11. Is a noncity school district required to provide transportation for pupils to nonpublic schools which are located beyond the school district boundaries or to nonpublic schools which are located outside of New York State?

    Yes. Transportation must be provided up to a limit of fifteen miles. (See also Segment D, page 15).

12. In the event two or more parochial schools of the same denomination are within the maximum distance allowed for transporting public school pupils, may the parents of a nonpublic school pupil designate the school to which transportation will be provided?

    Yes.

13. Is a school district required to furnish transportation to a pupil directly to or from the pupil's home?

    School districts generally are not required to transport pupils on a door-to-door basis. However, some handicapped pupils do require door-to-door transportation.

14. Is a school district required to provide transportation because of hazardous conditions?

    No. Eligibility for transportation is based solely on the distance between a pupil's home and the school which he or she attends.

15. Are there any laws or rules and regulations regarding limitations on the amount of time pupils may be required to travel on school buses?

    No.

16. May public school officials refuse to provide transportation for a nonpublic school student at the close of a half-day kindergarten program?

    No.

17. May public school officials deny transportation to nonpublic school pupils when the school which they attend has a daily schedule which differs from the public school schedule?

    Transportation may be denied if the nonpublic school schedule is unreasonable or differs significantly from the public school schedule. Public and nonpublic school officials are strongly urged to cooperate in planning schedules which accommodate the needs of all pupils in the most effective and economical way.

18. May public school officials enter into contracts with the parents of nonpublic school pupils to provide transportation for their own children?

Yes. However, such contracts are subject to the approval of the Commissioner of Educaton which is based, in part, on a test for reasonable cost. The contract is subject to competitive bidding if it exceeds $1,500. If the contract is limited to reimbursement for expenses, as distinguished from wage or salary expenses, the requirements of Article 19-A of the Vehicle and Traffic Law do not apply. However, if wages or salary are paid, then the parent is required to comply with Article 19-A. In either case the vehicle which the parent uses for such transportation must be inspected by the Department of Transportation.

19. May public school officials enter into contracts with parents of nonpublic school pupils to provide transportation to *other than* their own children?

Yes. However, the parent must meet all requirements for qualification as a school bus driver as stipulated in Section 156.3 of the Regulations of the Commissioner of Education. The parent must also satisfy all of the appropriate requirements described in the answer to question 15 above. In this case, however, the parent must comply with Article 19-A of the Vehicle and Traffic Law.

B. *Requests for Transportation*

1. Are the parents of nonpublic school pupils required to request public school authorities to provide transportation to their children?

Yes. Parents must request transportation services. This can be done directly to public school authorities, or, in some cases, requests are channeled through the nonpublic school to the public school authorities. However, the obligation to submit a timely request rests with the parents, and the neglect of the nonpublic school authorities to file a request is not a reasonable excuse.

2. Are public school officials obligated in any way to notify or remind the parents of nonpublic school pupils that requests for transportation are due?

No. The law does not require public school officials to notify parents. However it is recommended that districts publish the date local newpaper or use other means to inform pa s of the due date.

3. Must the requests for transportation which are made on behalf of nonpublic school pupils be made in writing?

Yes. In most cases the board of education provides request forms for this purpose.

4. Is there a deadline for submitting written requests for transportation from home to a nonpublic school?

Yes. The deadline is the first day of April which precedes the next school year. In other words, requests for transportation which is to begin in September must be made by April 1.

5. Must a written request for transportation be made every year?

Yes. Public school officials need to know every year who is requesting transportation in order to provide efficient service.

6. If a pupil moves into a public school district after April 1, must the district provide transportation to a nonpublic school?

Yes. If the district receives a request from a new resident after April 1, the request must be treated in the same way as requests received before April 1, provided that it is received by local school officials within 30 days of the date on which the pupil became a legal resident of the school district.

7. How must a board of education accommodate the request for transportation when the parent has requested transportation to one nonpublic school prior to April 1 and then decides to transfer the pupil to another nonpublic school?

This should be addressed in the same way as a late request; that is, the transportation should be provided if it will entail no extra expense to the district or if the board finds the reason for the transfer to be reasonable.

8. When is a request considered to be "late"?

A "late" request is one filed by a resident after the April 1 deadline or by a new resident more than 30 days after moving into the district.

9. May public school officials deny a request for transportation to a nonpublic school simply because the request was not submitted on time?

No. Late requests must be granted if there are good reasons for the delay.

10. Who has the authority to decide which reasons are good and which are unacceptable reasons for a late request?

This authority rests with the board of education, whose policies are carried out by public school officials.

11. Are public school officials required to honor a late request for transportation when providing that transportation would result in additional cost to the school district?

Yes. A late request must be honored if a reasonable excuse is provided for the delay in filing a timely request.

12. May public school officials deny a late request if there is an empty seat on the bus which would be designated to transport the nonpublic pupil and the provision of such transportation would not result in additional cost to the school district?

    No. As long as there is an empty seat on the bus which the pupil would normally be assigned, a request cannot be denied even if it is submitted late, and even if the excuses for making the late request are not reasonable, provided that there would not be any additional cost to the school district.

13. Do parents of nonpublic school pupils have recourse in the event public school officials deny a transportation request?

    Yes. The parent of a pupil who is denied transportation to a nonpublic school may make an appeal to the Commissioner of Education if a satisfactory resolution cannot be reached with the transportation office, the superintendent or the board of education.

14. Are there specific procedures for making an appeal to the Commissioner of Education?

    Yes. Copies of the procedure to be used for making an appeal may be obtained from the Education Department.

15. Is there any time limit for making an appeal to the Commissioner?

    Yes. An appeal must be filed within thirty days from the date on which the board of education denied the transportation, or the appeal may be denied on the basis of timeliness.

C. *Late Bus Transportation*

1. Are school districts required to provide late bus transportation?

    School districts are not required by law to provide late bus transportation. However, many districts do provide late bus transportation to allow pupils to take advantage of after-school activities and programs. If late bus transportation is provided, it must be made available equally to nonpublic and public school pupils.

2. If a school district provides late bus transportation in some circumstances, is the district required to provide it in all circumstances?

    No. School districts are not required to provide late bus transportation specifically for convenience, regardless of the number of pupils involved, nor is there any requirement that late transportation be provided from all schools simply because it is provided from one or two schools. School officials have the prerogative of establishing late bus transportation policy as they see fit. However, such policies must apply equally to nonpublic and public school pupils.

3. Is it necessary to request late bus transportation if approval has been received for regular transportation?

    Yes. Nonpublic school officials or parents of the pupils involved should make a special request for late bus transportation. However, there are no deadlines for such requests. They should be made with sufficient time for school officials to make arrangements to honor the requests.

4. Do the parents of nonpublic school pupils have recourse if public school officials deny their request for late bus transportation?

    Yes. They may appeal to the Commissioner of Education. (See questions 13 and 14 above).

5. Are school districts required to provide nonpublic school pupils with transportation for field trips, athletic events, religious instruction, etc.?

    No.

D. *Central Pickup Points*

1. Is a school district required to provide transportation to a nonpublic school which is more than 15 miles from the home of the nonpublic school pupil?

    Transportation beyond 15 miles is required only in accordance with the provisions of the pickup point law.

2. Is a school district required to provide a central pickup point for a nonpublic school pupil whose school is more than 15 miles from the pupil's home?

    A school district must establish at least one central pickup point if it is currently transporting a pupil to the nonpublic school to which transportation is requested. Nonpublic school pupils who reside more than 15 miles from the nonpublic school are eligible for transportation between the pickup point and the nonpublic school.

3. Is a school district required to provide a nonpublic school pupil with transportation to the pickup point or from the pickup point to the pupil's home?

    No. Transportation between the pickup point and the pupil's home is neither required nor authorized by the pickup point law.

4. Must the pickup point be within 15 miles of the nonpublic school?

    No. The distance between the pickup point and the school may be more than 15 miles.

5. Are all nonpublic school pupils who live 15 miles or more from school eligible for transportation from pickup points to school?

   No. If there are no pupils attending a nonpublic school who live less than 15 miles from that nonpublic school, then pupils who live more than 15 miles from that school are not eligible for transportation to that school from a central pickup point.

6. May a board of education deny transportation from a pickup point if the transportation would require adding another bus for service to the nonpublic school?

   No. The district is required to make the necessary arrangements to transport all eligible pupils.

7. May the designated pickup point be at a bus garage, administrative center owned by the school district, or some other convenient location?

   No. The school district is required to designate a public school or schools as pickup points.

8. If a district has several buildings, must all buildings be designated as pickup points?

   No. A board of education can designate one or more public school buildings as pickup points.

9. May a school district deny transportation from a pickup point to a nonpublic school if the money appropriated in the budget is insufficient to pay for the additional transportation?

   No. These transportation expenditures are an ordinary contingent expense.

10. May public transportation be used as an alternative to school bus transportation from a pickup point?

    Yes.

11. Is the school district responsible for supervision of pupils at the pickup point until transportation to the nonpublic school arrives?

    Yes.

E. *Transportation for Handicapped Pupils*

1. Must all school districts provide suitable transportation to all handicapped pupils regardless of whether they attend public or nonpublic schools?

   Yes.

2. Are all handicapped pupils entitled to special transportation solely because they are handicapped?

   No. The nature of the handicap is the basis for determining any special transportation.

3. Are there any deadlines for making transportation requests for handicapped pupils?

   No.

4. Must school districts provide transportation for handicapped pupils who are in dual enrollment programs between the nonpublic schools they attend and the neutral site at which they will receive services which are therapeutic or remedial in nature?

   Yes. Transportation must be provided for handicapped pupils in dual enrollment programs where the pupils receive therapeutic or remedial services in connection with special education programs.

5. Are handicapped pupils subject to the transportation distance limits which apply to nonhandicapped pupils?

   No. School board transportation policies which limit transportation for nonhandicapped pupils do not apply to handicapped pupils who require transportation.

6. Are there any limits on how far handicapped pupils may be transported between home and school daily?

   Yes. Handicapped pupils may not be transported more than 50 miles each way to and from school daily. However, the Commissioner of Education may authorize transportation beyond 50 miles each way provided that an appropriate nonresidential service, school, or program is not available within 50 miles of the pupils' homes.

7. Are handicapped pupils entitled to transportation to residential programs regardless of distance?

   Yes.

8. Are school districts required to provide transportation to handicapped pupils who are attending summer programs?

   Beginning with the 1987–88 school year, school districts are required to provide transportation to special education programs for pupils whose handicapping conditions are severe enough to need a structured learning environment twelve months a year.

F. *Transportation for Dual Enrollment*

1. Are school districts required to provide transportation for nonpublic school pupils to programs which are held in public schools?

   Yes. Nonpublic school pupils who receive services under the provisions for dual enrollment which appear in Section 3602 (c) (4) of the Education Law must be provided with transportation by the school district providing the services.

2. **Is the school district required to provide transportation between the public and nonpublic schools when the distance between the schools exceeds 1/4 mile?**

   Yes.

3. **Is the school district required to provide transportation between the public and nonpublic school when the distance between the schools exceeds 15 miles?**

   Yes. Transportation which exceeds 15 miles must be provided if the pupil is in a dual enrollment program.

VI. Dual Enrollment Programs

Under Section 3602-c of Education Law, pupils in nonpublic schools may also enroll in public school programs in three categories: occupational, handicapped, and gifted education. Dual enrollment is not permitted in any other areas. Dual enrollment does not in any way jeopardize the pupil's enrollment in the nonpublic school nor does it involve the pupil's registration in a public school. Through a request for participation in a dual enrollment program, a pupil is enrolled, but no formal registration in the public school is required. The law provides that nonpublic school pupils may not be segregated from public school pupils in any dual enrollment programs.

As the three programs cited above are quite different in the way they operate, each one is described individually in the following three sections: A. Occupational Education; B. Education for Pupils with Handicapping Conditions; and C. Gifted Education.

A. *Occupational Education*

Occupational education means all programs of instruction in agriculture; business, including marketing; home economics; health occupations; technical education; technology education; industrial arts; and trade education. Programs to prepare pupils for employment in occupations which are generally considered professional or which require a baccalaureate or higher degree are excluded.

In order to arrange for participation in an occupational education program, the parent of a nonpublic school pupil must file a written request with the board of education of the district in which the pupil resides. The nonpublic school may receive and forward the requests for the parents to the board of education. Requests should be filed as early as possible so that they can be considered by the board as plans are made and budgets written. Most school districts have this process underway by winter of the year preceding the year for which the request is made, though the legal deadline is June 1. Participation in an occupational education program does not involve the payment of tuition by parents or pupils.

A board of education may provide occupational education programs in local public schools or through contract with another school district or with a Board of Cooperative Educational Services. Pupils in nonpublic schools are entitled to participate in occupational education programs on the same basis as pupils in public schools.

The board of education must provide transportation between a nonpublic school and the site where the program is offered if the distance is more than one-fourth of a mile. The board may claim State aid for this transportation.

The following question-and-answer section addresses some of the details of how this program operates.

Questions and Answers

1. What does "dual enrollment" mean?

   Dual enrollment means that pupils enrolled in nonpublic schools may also enroll in certain programs in public schools.

2. What does "occupational education" mean?

   It means training or retraining designed to prepare individuals for gainful employment as semiskilled workers or technicians or paraprofessionals in recognized occupations and in new or emerging occupations or to prepare pupils for enrollment in advanced technical education programs.

3. Does the term "occupational education" as used in this law exclude any programs?

   Any program is excluded which is designed to prepare pupils for employment in occupations which are generally considered professional or which require a baccalaureate or higher degree.

4. May a board of education provide occupational education programs outside its local public schools?

   Usually the board of education provides the program within its local public schools. However, with the consent of the Commissioner of Education, it may contract with the Board of Cooperative Educational Services or with other districts to provide these programs.

5. Who determines the occupational education courses to be offered and student eligibility for such courses?

   Boards of education are authorized to determine which courses of instruction are offered and the standards of eligibility of pupils to participate in specific courses.

6. How does one request participation in occupational education programs?

   The parent of a pupil attending a nonpublic school must file a written request with the board of education of the district of residence.

7. Must each parent file a request for services directly with the district of residence?

   Yes. Parents may address their requests for services to the district of residence or they may route those requests through the nonpublic school in which their children are enrolled.

8. When should a request be filed?

   Under the law, the deadline is June 1 preceding the school year for which the request is made. However, requests should be made as early as possible, as budgets and class rosters are usually planned during the preceding winter and spring.

9. What can one do if a board of education refuses to provide these services?

   In such a case, one can appeal to the Commissioner of Education for a review of the case, as provided in Section 310 of Education Law. (See questions 14 and 15, page 15.)

10. Is there an age limit for pupils to participate in occupational education programs?

    A board of education which establishes these programs must provide access to them to all persons under 21 years of age who have not received a high school diploma.

11. May a nonpublic school pupil seek admission to an occupational education program such as business or agriculture in a comprehensive public high school?

    Yes. This may be done if there is an approved occupational program as part of a comprehensive high school program.

12. Does the fact that a nonpublic school which a pupil attends offers an identical program, such as business or home economics, have any effect on the pupil's eligibility for admission to such a program at the comprehensive public high school?

    No.

13. If a pupil attends a nonpublic school located outside the pupil's district of residence, in which district may the pupil enroll in an occupational education program?

    The pupil is entitled to enroll in an occupational education program only in the district in which the nonpublic school is located, not in the district of residence. However, parents must file requests for participation in the program with the board of education of the district of residence.

14. Are pupils who are not residents of New York State eligible to participate in these programs?

    No. Dual enrollment programs are available only to New York State residents.

15. May quotas be established on the number of pupils a school district sends to a BOCES or serves in its own system in occupational education programs?

    No. Quotas based on unfavorable financial conditions, austerity budgets or other problems are not acceptable and cannot be used to deny pupils access to occupational education programs.

16. May nonpublic school pupils enrolled in occupational education programs be segregated from the public school pupils?

    No. Nonpublic school pupils must not be separated from pupils regularly attending the public schools.

17. Who is responsible for transporting nonpublic school pupils to occupational education programs?

    The board of education of the district providing the service provides transportation for pupils in occupational education programs between the nonpublic school and the public school site if the distance between the nonpublic school and the public school exceeds one-fourth of a mile.

18. Is the district obligated to provide transportation between public and nonpublic schools beyond a quarter of a mile regardless of the distance between those schools?

    Yes. Transportation must be provided.

19. If a nonpublic school pupil is hurt while walking between the nonpublic school and the public school, is the public school liable?

    Boards of education, teachers and other employees of public schools are not liable for harm to pupils caused by others while the pupils are walking between public and nonpublic schools.

20. How are tuition costs for these programs met?

    Boards of education providing programs to nonresident pupils are entitled to recover tuition from the district of residence of such pupils in accordance with a formula promulgated by the Commissioner of Education.

21. Is this State aid paid to the district of residence or the district providing the programs?

    The State aid is paid to the district providing the programs.

B. *Education for Pupils with Handicapping Conditions*

Through dual enrollment provisions, pupils with handicapping conditions enrolled in nonpublic schools are eligible to receive special education services. A pupil with a handicapping condition is defined as a person between the ages of five and twenty-one who has not received a high school diploma and who, because of mental, physical or emotional reasons can receive appropriate educational opportunities from special services and programs. Any pupil enrolled in a nonpublic school who is identified as handicapped is eligible to receive special education services through dual enrollment. As in other dual enrollment programs, the parent should request these services from the district of residence.

The Committee on Special Education (CSE) in each school district arranges for participation in this part of the dual enrollment program. The CSE, with parental consent, evaluates pupils thought or known to be handicapped who reside within the district. In order for this to occur, a referral to the CSE is submitted by a parent or staff member of the nonpublic school the pupil attends. The CSE immediately requests parent consent for evaluation. Once consent is obtained, the CSE has a complete individual evaluation conducted to determine the need for special education.

Based on evaluative data and following discussion among parents and school staff at a CSE meeting, a recommendation is presented to the Board of Education and to the pupil's parents for approval. If the CSE concludes that a pupil is eligible for special education, the recommendation includes the general framework for an Individualized Education Program (IEP), called *Phase I*. Phase I of the IEP describes the special education programs and services recommended for the pupil, the pupil's classification, annual goals and several other overall program components.

The Board of Education and the parents, upon notification of the recommendation, have 30 school days to agree or disagree with the CSE, work out concerns and arrange for the pupil to begin the special education program. Specific short-term objectives and evaluation criteria are developed by parents, teachers and school staff within 30 days after the pupil begins the approved program. This is referred to as "the Planning Conference to develop Phase II of the IEP."

The Board of Education-approved program for a pupil with a handicapping condition must be provided through the public school system at no expense to the parent. The Board of Education may provide the program in a public school in the district or through contract with another school district or with the Board of Cooperative Educational Services (BOCES). The location for placement is contained in the IEP and is approved or modified as part of the CSE recommendation.

In cases of dual enrollment, a pupil with a handicapping condition receives general instruction in the nonpublic school and receives special education programs or services at a neutral site, that is, a site other than a religiously affiliated nonpublic school. If transportation is needed for handicapped pupils between the nonpublic school and the site where special services are provided, the public school district must provide it.

Questions and Answers

1. Which pupils are eligible to receive special education programs and services through the public school?

   Pupils between the ages of five and twenty-one who have been identified as handicapped through the CSE in their district of residence are eligible for the special education programs and services appropriate for meeting their individual needs. Appropriate services are determined in a CSE recommendation, agreed upon by the parents and approved by the Board of Education.

2. Who may refer a pupil to the CSE?

   A pupil may be referred to the CSE by:
   - his or her parent or person in parental relationship;
   - a professional staff member of the school district in which the pupil resides, or the public or nonpublic school the pupil legally attends;
   - a licensed physician;
   - a judicial officer;
   - the commissioner or designee of a public agency responsible for welfare, health or education of children; or
   - a pupil on his or her own behalf, if 18 years of age or older or an emancipated minor.

3. What is an IEP?

   An IEP is an Individualized Education Program which is developed for each school-age pupil with a handicapping condition receiving special education

in New York State. It includes two phases. Phase I of the IEP is developed by the CSE and participants at the CSE recommendation meeting. Phase II is developed at a planning conference with parents and teachers.

4. What does an IEP contain?

   The contents of each IEP differ depending on the individual needs of a handicapped pupil. However, each IEP must indicate:

   Phase I

   - pupil performance levels and individual needs;
   - the classification of the handicapping condition and annual goals for the pupil;
   - programs and services to be provided in regular, special, occupational and physical education;
   - date for initiation of special education and related services, including their frequency and duration;
   - specialized equipment and adaptive devices;
   - testing modifications; and
   - placement/site

   Phase II

   - short-term instructional objectives and evaluative criteria related to the pupil's annual goals.

5. Who is responsible for providing transportation of nonpublic school pupils to participate in dual enrollment programs for pupils with handicapping conditions?

   The school district in which the pupil resides is responsible for providing the necessary transportation.

6. What timelines are required for the CSE referral, evaluation, recommendation and placement process?

   The school district has:

   - 30 school days from parental consent to evaluate (or 40 school days from the time of referral, whichever is less) to evaluate a pupil and recommend an appropriate program; and
   - 30 school days from the time of recommendation to obtain consent from parents, obtain approval from the Board of Education and arrange for implementation of the program; and
   - 30 school days from implementation of the program to develop Phase II of the IEP at a planning conference.

   Referrals may be submitted to the CSE at any time during the year. IEPs must be reviewed at least annually to determine pupils' continuing needs for special education. All pupils in special education are reevaluated every three years to ensure current data.

7. May the Board of Education require the parent of a pupil in a nonpublic school to transfer the pupil to a public school if the pupil is determined to be handicapped?

   No. Parents who voluntarily enroll their child in a nonpublic school may have access to special education programs and services to the extent approved by the Board of Education through the CSE in the pupil's district of residence. This is not a requirement on the parents' part, however. It is a method for obtaining the free special education to which each handicapped pupil is entitled, if the parents so choose.

C. *Gifted Education*

Dual enrollment for nonpublic school pupils is also possible in the area of gifted education. Gifted education programs or services are those beyond the regular school program designed to realize the full potential of pupils who show evidence of high performance capability and exceptional potential in areas such as general intellectual ability, special academic aptitude, and outstanding ability in visual and performing arts. Public school districts are not required to have gifted programs, but public schools are required to have gifted programs if they take the formula money allocated to all public schools by the Legislature. However, the source of the funding notwithstanding, all districts offering gifted programs/services must make participation available to nonpublic school pupils who meet district entrance requirements. All programs and services provided to nonpublic school pupils will take place at a public school site.

A parent should apply for dual enrollment services to the district of residence. The district may then provide these services or it can contract with a Board of Cooperative Educational Services or contract with the school district in which the nonpublic school is located to provide a gifted program. Requests for participation must be filed with the board of education of the district of residence on or before June 1 preceding the school year for which the request is made.

Each board of education providing gifted education should determine by resolution which courses of instruction will comprise its gifted programs and the eligibility requirements for admission to the program. Nonpublic school pupils must meet the eligibility requirements the district has established for participation of public school pupils.

The board of education must provide transportation between a nonpublic school and the site where the gifted education program is offered if the distance is more than

one-fourth of a mile. The district may claim State aid (90% of actual cost) for this transportation.

Questions and Answers

1. **What is the legal definition of a gifted pupil?**

   Gifted pupils are those who show evidence of high performance capability and exceptional potential in areas such as general intellectual ability, special academic aptitude and outstanding ability in visual and performing arts. This definition includes those pupils who require educational programs or services beyond those normally provided by the regular school program in order to realize their full potential.

2. **May a board of education provide gifted education programs outside its local public schools?**

   Usually the board of education provides the program within its public schools. However, with the consent of the Commissioner of Education, it may contract with the Board of Cooperative Educational Services or with other districts to provide these programs. The board may not provide this program at the nonpublic school site.

3. **How is eligibility determined in gifted education programs?**

   Boards of education are authorized to determine by a resolution which courses of instruction comprise the district's gifted programs and the eligibility requirements for admission to the program.

4. **How does one request participation in gifted education programs?**

   The parent of a pupil attending a nonpublic school must file a written request with the board of education of the district of residence.

5. **Must each parent file a request for services with the district of residence directly?**

   No. Parents may address their requests for services to the district of residence and route these requests through the nonpublic school in which the children are enrolled. The nonpublic school may submit requests collectively in accordance with proper timelines.

6. **If a pupil attends a nonpublic school located outside the pupil's district of residence, in which district may the pupil enroll in a gifted education program?**

   The pupil may enroll in a gifted education program only in the district in which the nonpublic school is located, not in the district of residence. However, the parent must file a request for participation in the program with the board of education of the district of residence.

7. **When should a request be filed?**

   Under the law, the deadlines is June 1 preceding the school year for which the request is made. However, it is recommended that the request be made as early as possible so that participation of the nonpublic school pupil can be planned by the local school district.

8. **Is a district required to have a gifted education program?**

   No. The law does not require a district to have a program. However, if the district does have a program, it must make participation in that program available to nonpublic school pupils.

9. **What recourse does a parent have if a board of education refuses to provide for the participation of a nonpublic school pupil in a gifted education program?**

   In such a case the parent can appeal to the Commissioner of Education for a review of the case as provided in Section 310 of the Education Law. (See questions 14 and 15, page 15.)

10. **Who is responsible for providing transportation for nonpublic school pupils to and from the site where the gifted program is offered?**

    The school district offering the program is responsible for providing this transportation.

11. **May nonpublic school pupils enrolled in these programs be segregated from public school pupils?**

    No. Nonpublic school pupils must not be separated from public school pupils who are enrolled in these gifted programs.

12. **How are tuition costs met?**

    The district of residence is responsible for the cost of tuition.

VII. Legal Citations

A. Health Services
Education Law 912

B. Textbook Loan Program
Education Law 701

C. Computer Software Loan Program
Education Law 751 and 752

D. Library Materials Loan Program
Education Law 711 and 712

E. Transportation
Education Law 3635

VIII. Sources of Additional Information

If you have any questions about the material contained in this booklet, would like more information concerning the topics covered, or question the applicability of any of the material within this booklet for a specific case, you may wish to contact staff members of the State Education Department in the following areas:

Health & Welfare Services	Bureau of Health Education and Services State Education Department Education Building Annex, Room 964 Albany, NY 12234 (518) 474-1491
Textbooks Computer Software Library Materials	Bureau of State Aided Programs Division of Educational Finance State Education Department Education Building Annex, Room 969 Albany, NY 12234 (518) 474-2977
Transportation	Bureau of Educational Management Services State Education Department Cultural Education Center Room 3055 Albany, NY 12230 (518) 474-3384
Dual Enrollment	Bureau of Occupational Education Program Services State Education Department One Commerce Plaza, Room 1623 99 Washington Avenue Albany, NY 12234 (518) 474-4806
	Office for Education of Children with Handicapping Conditions State Education Department Education Building Annex, Room 1073 Albany, NY 12234 (518) 474-5548
	Division for Program Development State Education Department Education Building, Room 314D Albany, NY 12234 (518) 474-5966
Nonpublic Schools	Office for Nonpublic School Services State Education Department Education Building Annex, Room 475 Albany, NY 12234 (518) 474-3879